

## REMARKS

All outstanding requirements will now be addressed in the order they appear in the Office Action mailed June 12, 2008.

### *Lack of Unity of Invention*

Claims 14-23 stand withdrawn from further consideration as directed to non-elected subject matter. Applicants have canceled claims 14-23 solely to expedite the prosecution of the allowable subject matter. Applicants reserve the right to file continuing applications or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicants do not hereby abandon or waive any rights in the non-elected inventions.

### *Claim Rejections under 35 USC § 112*

Claims 1-13 and 24-32 stand rejected under 35 U.S.C. 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1:

In step a), there is no antecedent basis for “the acid addition reaction.” Applicants have replaced the definite article “the” with an indefinite article “an.”

In step b), the recitation of “if necessary” fails to particularly point out and distinctly claim the intended subject matter because conditions requiring such addition are undefined. Applicants have replaced the phrase “if necessary” with the phrase “optionally” to indicate that addition of an ester solvent is left to choice of a skilled artisan, but is not compulsory or automatic.

In the recitation of “the esters of lower carboxylic acids and C<sub>1</sub>-C<sub>4</sub> aliphatic alcohols,” it is not possible to determine if the esters are of only the lower carboxylic acids or of both lower carboxylic acids and C<sub>1</sub>-C<sub>4</sub> alcohols. Applicants respectfully submit that esters are organic

compounds formed when an acid and an alcohol combine and release water. By definition, esters would be both of acids and alcohols. Thus, Applicants respectfully submit that the phrase “the esters of lower carboxylic acids and C<sub>1</sub>-C<sub>4</sub> aliphatic alcohols” is not indefinite. However, the Applicants are willing to overcome the rejection by specifying that the esters are “C<sub>2</sub>-C<sub>8</sub> aliphatic esters.” Specifically, lower carboxylic acids are recognized in the art as having 1-4 carbon atoms and C<sub>1</sub>-C<sub>4</sub> aliphatic alcohols have by definition 1-4 carbon atoms; when combined to form esters, they species would yield C<sub>2</sub>-C<sub>8</sub> aliphatic esters.

Claims 6, 7:

The recitation of various percentages fails to define the process when there is no basis for recited percentages (by weight, volume, mole, etc.). Applicants have added “v/v” as basis for the recited percentages.

Claim 8:

In step a), there is no antecedent basis for “the acid addition reaction.” Applicants have replaced the definite article “the” with an indefinite article “an.”

In the recitation of “the esters of lower carboxylic acids and C<sub>1</sub>-C<sub>4</sub> aliphatic alcohols,” it is not possible to determine if the esters are of only the lower carboxylic acids or of both lower carboxylic acids and C<sub>1</sub>-C<sub>4</sub> alcohols. Applicants respectfully submit that esters are organic compounds formed when an acid and an alcohol combine and release water. By definition, esters would be both of acids and alcohols. Thus, Applicants respectfully submit that the phrase “the esters of lower carboxylic acids and C<sub>1</sub>-C<sub>4</sub> aliphatic alcohols” is not indefinite. However, the Applicants are willing to overcome the rejection by specifying that the esters are “C<sub>2</sub>-C<sub>8</sub> aliphatic esters.” Specifically, lower carboxylic acids are recognized in the art as having 1-4 carbon atoms and C<sub>1</sub>-C<sub>4</sub> aliphatic alcohols have by definition 1-4 carbon atoms; when combined to form esters, they species would yield C<sub>2</sub>-C<sub>8</sub> aliphatic esters.

Claims 10, 29:

The reference to “boiling temperature” should indicate that it is of the reaction mixture itself. The Applicants have so indicated. If the form of the indication is insufficient to overcome the

Examiner's objection, Applicants agree to and respectfully request proper indication by Examiner's amendment.

Claims 11, 26, 30:

The reference to "essentially free of the  $\beta$ -crystal form" fails to define basis on which such purity is determined. Applicants have added the limitation "as determined by X-ray powder diffraction, IR, or DSC."

Withdrawal of the rejections over the claim as amended is respectfully requested.

### ***CONCLUSION***

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to **Deposit Account No. 503182**.

Customer Number: **33,794**

Respectfully Submitted,

/Matthias Scholl/

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